Police Prosecutor Update

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A recent Court of Appeals case examined an unconstitutional OWI checkpoint. In fact, it began its opinion by stating, "we reach an age old conclusion – a worthy end does not necessarily justify unreasonable means."

The facts are fairly simple. Just after midnight a police officer responded to a dispatch about a party in progress in a rural area. When the officer arrived at the residence in question, he observed about 60 vehicles parked near the home. Several other police officers also responded to the dispatch. To ensure that none of the partygoers drove away from the party while intoxicated, the officers set up a checkpoint in the road, immediately adjacent to the driveway, in such a way that anyone leaving the house would have to drive through the checkpoint. After breaking up the party, the officers administered portable breath tests to everyone exiting the residence who planned on driving and then required all vehicles to drive through the checkpoint, where the officers observed the drivers to further ensure that no one was intoxicated. One officer observed the defendant and felt that he was trying to avoid the checkpoint. The officer stopped the defendant and administered a PBT, which the defendant failed.

Our Supreme Court has held that "a minimally intrusive roadblock designed and implemented on neutral criteria that safely and effectively targets a serious danger specific to vehicular operation is constitutionally reasonable, unlike random and purely discretionary stops. . . ." The Court identified relevant factors to consider: (1) whether the roadblock was staged pursuant to a formal, neutral plan approved by appropriate officials; (2) the objective, location, and timing of the checkpoint, taking these factors into account to determine whether the seizure was well calculated to effectuate its purpose; (3) the amount of discretion exercised by field officers conducting the checkpoint, with a goal of minimal discretion to ensure against arbitrary or inconsistent actions by the screening officers; (4) degree of intrusion and whether the roadblock was avoidable; (5) whether the surrounding conditions of the checkpoint were safe; and (6) whether the checkpoint was effective.

In this case, there was no evidence that the checkpoint was staged pursuant to a formal, neutral plan or guidelines. In fact the evidence indicated that the officers in question set up the checkpoint spontaneously in an impromptu response to the party. Secondly, the Court found troubling that the seizures took place on private property or immediately adjacent to private property and that the checkpoints targeted a specific group of people rather than the public at large. Third, the Court noted that officer discretion is a very important consideration. Here the officers apparently had unfettered discretion since there was no standardized instructions or a standardized plan. With regard to degree of intrusion, there was no evidence establishing how long it took to administer the PBTs or how long it took for drivers waiting to exit the party to make it through the second checkpoint. Also, the mere fact that partygoers were forced to pass through two checkpoints weighed heavily against the reasonableness of the police officers' actions. Also, the checkpoints were completely unavoidable. This complete lack of avoidability weighed heavily against the State. Finally, regarding effectiveness, the defendant was the only person of around 60 partygoers to be arrested for OWI. In the Court's view, this was "an inarguably low apprehension rate," and weighed against effectiveness. The Court then concluded that given that five out of the six factors weighed slightly or heavily against the reasonableness of the dual checkpoints, they were not constitutionally reasonable.

Case: *King v. State*, 877 N.E.2d 518 (Ind. Ct. App. 2007)